

# TELEMARKETING

## *Telemarketing “No Call” List*

### Overview

The Wisconsin department of agriculture, trade and consumer protection (DATCP) maintains a telemarketing “no call” list of consumers who do not wish to receive telemarketing calls (see Wisconsin Statutes section 100.52). DATCP has adopted rules to implement the “no call” list (see Wisconsin Administrative Code chapter ATCP 127).

Consumers may contact DATCP to sign up for the “no call” list. Telemarketers may not call consumers whose telephone numbers appear on the list. Telemarketers must register with DATCP and pay fees to finance the list compilation and distribution. On a regular periodic basis, DATCP must update the list and distribute it to registered telemarketers.

### “Telephone Solicitations” Covered

The “no call” list applies to “telephone solicitations” to persons located in this state, regardless of where the calls originate. A “telephone solicitation” means an unsolicited telephone call for the purpose of encouraging the call recipient to buy property, goods or services, or that is part of a plan or scheme to encourage the call recipient to buy property, goods or services. “Telephone solicitation” does not include any of the following:

- A telephone call encouraging the call recipient to buy property, goods or services from a “nonprofit organization” if the sale proceeds are not subject to Wisconsin sales tax or federal income tax.
- A telephone call seeking bona fide charity *donations* (not sales), unless the call is part of a plan or scheme to make *sales*.
- A telephone call made by an individual acting on his or her own behalf, and not as an employee or agent for another person. This exemption does *not* apply to a caller who does any of the following:
  - Sells or promotes the sale of property, goods or services for others.
  - Sells or promotes the sale of goods that the caller buys from another person who controls or limits the caller’s sales methods.
- A telephone call made in response to the call recipient’s request for that call.

- A telephone call made to a current client who has agreed to receive property, goods, or services of the type promoted by the telephone call.
- A telephone call made to a number listed in the current local business telephone directory.
- One telephone call to determine whether a former client mistakenly allowed a contractual relationship to lapse.
- A telephone call to determine a former client's level of satisfaction, unless the call is part of a plan or scheme to encourage the former client to buy more property, goods or services.

## **Telemarketers Must Register**

- A firm must register annually with DATCP, and pay required fees, if the firm employs or contracts with individuals to make telephone calls to consumers. A firm that sells property, goods or services may register on behalf of another firm that hires individual telemarketers to promote sales by the registering firm.
- No individual may make a telephone solicitation to a residential telephone customer unless the telephone solicitation is covered by a registration.

## **The “No-Call” List**

DATCP compiles a “no-call” list containing the telephone numbers and ZIP codes of residential telephone customers who sign up for the list. No person may make a telephone solicitation, either directly or through an employee or agent, to a residential customer whose telephone number appears on the current no-call list.

A residential telephone customer may contact DATCP by phone, or at DATCP's website, to sign up for the “no-call” list. A customer's caregiver may sign up on behalf of the customer. The customer or caregiver must give DATCP all the following information:

- The customer's telephone number including area code.
- The customer's ZIP code.
- The customer's name and address, if requested by DATCP. *DATCP will not include this information on the “no-call” list, but may request it for verification purposes.*
- The caregiver's name and address, if a caregiver contacts DATCP on behalf of the customer. *DATCP will not include this information on the “no-call” list, but requires it for verification purposes.*

## **Distributing the List**

DATCP distributes the “no-call” list to each telemarketer who is currently registered with DATCP. A “no-call” list takes effect on a date specified by DATCP, not sooner than 10 days after DATCP distributes the list.

## **Updating the List**

DATCP compiles and distributes an updated “no-call” list every 3 months. DATCP deletes a residential telephone customer from the “no-call” list 2 years after that customer last signed up for inclusion on the list. A customer may renew a sign-up at any time.

## **No Unauthorized Release**

A registered telemarketer may not redistribute any part of a “no-call” list to any other person, except that the registrant may redistribute the list to a person covered by the registration. DATCP may not release a “no-call” list, or any information used to compile the list, except that:

- DATCP may release a “no-call” list to telemarketers currently registered with DATCP.
- DATCP may release a “no-call” list as necessary to enforce the “no call” law, or to comply with a subpoena or judicial process, subject to such protective orders as may be necessary to ensure the confidentiality of the list.
- DATCP may release the “no-call” list to the Federal Trade Commission or other federal agency maintaining a national “no-call” list.

## **Prohibited Practices**

A telemarketer may not do any of the following (violators may be prosecuted):

- Make telephone solicitations to a residential telephone customer, unless the telemarketer is covered by a current registration with DATCP.
- Make a telephone solicitation to a residential telephone customer whose telephone number appears on the current “no call” list.
- Use an electronically prerecorded message in a telephone solicitation to a residential or nonresidential telephone customer without the prior consent of that telephone customer.
- Fail to disclose, at the request of a residential telephone customer receiving a telephone solicitation, the telemarketer’s Wisconsin registration number.

- Make a telephone solicitation to a nonresidential telephone customer (business) if that business has notified the telemarketer by mail that the business does not wish to receive telephone solicitations. A telemarketer must provide a business with the telemarketer's mailing address within 10 days after the business requests it.
- Require, instruct, authorize or assist any person to make a prohibited telephone solicitation.
- Use caller-ID blocking when making a telephone solicitation.

## **Rule Background**

DATCP's "no call" rule (Wisconsin Administrative Code Chapter ATPC 127, subch. V) is adopted under authority of Wisconsin Statutes sections 100.20 and 100.52. See DATCP Docket No. 01-R-07 (Rules Clearinghouse No. 02-036).

## **Rule Enforcement**

### ***Private Remedy***

A person who suffers a monetary loss because of a telemarketer's violation of ATPC 127 may sue the seller under Wisconsin Statutes section 100.20(5), and may recover twice the amount of the loss, together with costs and attorneys fees.

### ***Injunction and Restitution***

DATCP may seek a court order under Wisconsin Statutes section 100.20(6) or 100.52(9), enjoining violations. The Department of Justice or a district attorney may represent DATCP in court.

### ***Civil Forfeiture***

DATCP or any district attorney may start a court action under Wisconsin Statutes section 100.26(6) to recover a civil forfeiture from a seller who violates ATPC 127. The court may impose a civil forfeiture of up to \$10,000 per violation. Alternatively, DATCP may seek a civil forfeiture of \$100 per violation under Wisconsin Statutes section 100.52(10). The Department of Justice or a district attorney may represent DATCP in court.

### ***Criminal***

A district attorney may start a criminal prosecution, under Wisconsin Statutes section 100.26(3), against a seller who violates ATPC 127. A violator may be fined up to \$5,000 or sentenced to as much as a year in jail, or both.